

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Petition by the Colorado Public Utilities)	CC Docket No. 96-45
Commission, Pursuant to 47 C.F.R.)	DA 03-1957
§ 54.207(c), for Commission Agreement)	
in Redefining the Service Area of)	
Wiggins Telephone Association,)	
A Rural Telephone Company)	

REPLY COMMENTS
BY THE COLORADO PUBLIC UTILITIES COMMISSION

The Colorado Public Utilities Commission (COPUC), by and through its attorneys, submits these comments in reply to the initial comments submitted by the Wiggins Telephone Association, Inc. (WTA),¹ and the National Telecommunications Cooperative Association (NTCA) on June 27, 2003. For the reasons stated here and in COPUC's Petition for Commission Agreement in Redefining the Service Area of Wiggins Telephone Association, a Rural Telephone Company, the Commission should concur in the redefinition of WTA's service area as suggested by COPUC.

Summary

COPUC affirms its request that WTA's study area/service area be redefined to the wire center level; this is consistent with the manner in which WTA's universal service support has now been disaggregated. WTA and NTCA, in their June 27 comments, oppose COPUC's petition. COPUC disagrees with the arguments made by WTA and NTCA. First, those parties' suggestion that the Commission delay a decision on COPUC's Petition until the Joint Board and the Commission itself create new rules for universal service funding is inappropriate. COPUC's Petition was filed under the Commission's existing rules, and should be considered under those rules. It is pure speculation to assume that the Joint Board and the Commission will, sometime in the indefinite future, adopt new universal service rules and policies that would affect COPUC's Petition. Indeed, the Commission's order initiating a new proceeding before the Joint Board, and the Joint Board's recent request for comments indicate that the large majority of issues now being considered by the Joint Board are unrelated to COPUC's petition to redefine WTA's service area.

¹ The Colorado Telecommunications Association, Inc. (CTA) supports and joins in WTA's comments.

Second, WTA and NTCA are incorrect in contending that COPUC failed to consider the potential for cream-skimming if WTA's service area is disaggregated. In support of their argument, the parties contend that cream-skimming will occur if a competitive eligible telecommunications carrier (CETC) serves only low-cost areas in WTA's study area. However, COPUC points out that, for purposes of considering the possibility of cream-skimming in the context of any universal service program, the relevant inquiry is whether CETCs could serve mainly low-cost areas, but receive high (or even averaged) levels of universal service support. If competitors serve only low-cost areas and receive appropriately low levels of universal service support, cream-skimming does not exist. As explained in the Petition, the disaggregation and targeting of universal service support for WTA (pursuant to WTA's Path 2 filing) eliminates the possibility of cream-skimming.

Third, many of WTA's and NTCA's argument are irrelevant to COPUC's Petition. The parties suggest that CETCs, as a condition of receiving universal service support, provide the identical features and functions in telephone service as rural incumbent local exchange carriers (ILEC) with the same quality of service; that universal service support for CETCs be based upon their own costs; and that traditional wireless handset service not be eligible for universal service support. However, these suggestions are beyond the scope of this docket. These suggestions require changes to the universal service rules, or are matters to be raised in designation proceedings before state commissions (*i.e.* where the state commission considers whether a particular applicant should be designated as a CETC). COPUC also notes that, in any event, in the proceeding to consider designation of a CETC in WTA's wire centers, the application by N. E. Colorado Cellular (NECC),

COPUC did require NECC to provide supported services in a substantially similar manner as WTA.

The Request for Delay in Consideration of COPUC's Petition

WTA and NTCA both suggest that the Commission initiate a proceeding to review COPUC's Petition (*i.e.* that the Commission not concur with the Petition by operation of Rule 47 C.F.R. 54.207(c)(3(ii)), and then delay further consideration of the Petition apparently until the Joint Board and the Commission issue new rules pursuant to the Public Notice of the Federal-State Board on Universal Service, CC Docket No. 96-45, FCC 03J-1 (rel Feb.7, 2003). The parties argue that the pending proceeding will have a direct impact on COPUC's Petition. COPUC opposes this request for delay.

In the first place, the assertion that the new Joint Board proceeding *will result* in new rules or policies that *will affect* the Petition is pure speculation. Indeed, COPUC notes that the large majority of issues on which the Joint Board has requested comment do not concern rural carriers' service areas. The Public Notice requests comment on topics such as the general state of competition in high-cost areas (paragraphs 9-14); the methodology for calculating universal service support in competitive study areas (paragraphs 15-25); the scope of universal service support (*e.g.* whether to support only a single connection to a customer's premises (paragraphs 26-32)); and the process for designating ETCs (paragraphs 33-35). Only in one paragraph of the Public Notice, paragraph 35, does the Joint Board request comment on the issue of certifying CETCs for a service area other than a rural carrier's study area. Clearly, most of the issues under consideration in the pending Joint Board proceeding have no direct relevance to COPUC's request to redefine WTA's service area.

Delaying consideration of COPUC's Petition because the pending Joint Board proceeding might result in new rules relating to disaggregation of rural study areas is unjustified. This suggestion is nothing less than a suggestion that the Commission refuse to apply existing rules to a pending petition; then, apparently, apply anticipated new rules retroactively to the (by then long-delayed) Petition--of course, assuming the new rules are somehow relevant to COPUC's request. WTA's and NTCA's suggestions are legally questionable, and, moreover, unnecessary. Whatever new universal service rules the Commission may eventually adopt in the pending proceeding will, if the Commission deems it appropriate, apply prospectively to any CETC designated to serve in WTA's redefined service area. There is, therefore, no good reason to delay consideration of COPUC's Petition in the speculation that new rules will change the manner in which CETCs operate in rural areas. Furthermore, as the Petition explains, redefining WTA's service area will remove a barrier to entry and promote competition in that area. The Commission should not forego these public interest benefits by delaying consideration of the Petition for some unknown and indefinite period of time.

The Potential for Cream-Skimming in WTA's Service Area

The comments assert that disaggregating WTA's service area to the wire center level would harm WTA by allowing CETCs to cream-skim. WTA and NTCA define cream-skimming as a competitor, such as NECC, serving customers only in relatively low-cost wire centers. According to the comments, COPUC failed to consider this potential for cream-skimming. COPUC disagrees with these contentions.

COPUC points out that any CETC certified in any WTA redefined service area will be required to serve *all* customers in that area. *See* 47 U.S.C. § 214(e)(1) (ETC shall

offer supported services "throughout the service area for which designation is received"); accord Commission Rule 47 C.F.R. 54.201(d). Therefore, a CETC will not be able to choose to serve only low-cost customers in any WTA disaggregated service area. Secondly, COPUC points out that with the recent disaggregation and targeting of WTA's universal service support (discussion *infra*), a CETC serving only lower-cost service areas will receive lower levels of support. COPUC argues that this result--matching lower levels of universal service support with lower-cost service areas--eliminates any meaningful opportunities for any carrier to cream-skim.

COPUC notes that WTA's universal service support was disaggregated under Path 2. See Petition, pages 3-5. In fact, WTA agreed to the Path 2 disaggregation by signing the Stipulation and Settlement approved by COPUC. See Attachment 2 to Petition. Notably, in the Stipulation, WTA specifically agreed that, "The stipulated WTA Path Two Disaggregation Plan is *competitively neutral in its impact and effect....*" (emphasis added). Stipulation and Settlement Agreement, page 9, paragraph 4. Given WTA's agreement to the Stipulation, it is expressly inconsistent for it to now argue that the potential for cream-skimming exists if the Commission concurs with the Petition, and that COPUC failed to consider the possibility of cream-skimming before filing the Petition. In fact, what WTA is now objecting to is not the possibility of cream-skimming, but the possibility of competition itself even under "competitively neutral" conditions. This objection is not well-taken. The Petition (pages 11-13) explains that COPUC specifically considered the possibility of cream-skimming in WTA's service area when it filed the Petition, and concluded that disaggregation of support for WTA in the proceeding before COPUC addresses this concern.

Scope of the Instant Proceeding

WTA and NTCA raise a number of arguments that should not, indeed cannot, be considered in this proceeding. This matter concerns only COPUC's proposal to redefine WTA's service area. Many of the concerns raised by WTA and NTCA in their comments are beyond the scope of this docket; as such, those concerns are irrelevant to COPUC's Petition.

WTA's contention that CETCs should be required to provide the same service quality, features, and functions as rural ILECs, and that ILECs be put on the same competitive footing as CETCs are designation issues--issues to be addressed by the state commission when carriers request certification as ETCs. The argument that universal service support for CETCs be based on their own costs, instead of rural ILECs' costs, must be addressed by the Commission when (and if) it reconsiders Rules 47 C.F.R. 54.307(a)(1), and 54.315(e)(7). Clearly, these suggestions cannot be addressed in the instant proceeding.

WTA also argues that traditional wireless service plans should not be eligible for universal service support. COPUC disagrees with this assertion. The Commission has adopted a list of nine supported services and directs how and where those services are to be offered. *See* Rule 47 C.F.R. 54.101. Nowhere in the Commission's rules regarding ETC designation is there a statement that wireless providers and traditional cellular service plans are ineligible for designation as ETCs and the resulting universal service support. If the traditional cellular service plans meet the required criteria, the plans are eligible to receive support under existing rules. If WTA believes that NECC's traditional

cellular service plans are not meeting all the required criteria, it should bring that issue *to COPUC* for determination, since COPUC is charged with the responsibility for granting and monitoring ETC status. This Petition is not the forum where those issues can be addressed.

COPUC finally notes one of its past decisions designating CETCs in Colorado. In accordance with 47 U.S.C. 214(e)(1), COPUC recognizes that CETCs must offer supported services throughout the service area for which designation is sought, and that such CETCs must advertise the availability of service. WTA's and NTCA's comments imply that NECC is drawing universal service support while having no accountability to COPUC for the services it provides. This assertion is inaccurate. NECC, in COPUC Docket No. 00A-315T, was granted ETC certification in Colorado. ETC certification was based, in part, on NECC stipulating to perform under substantially similar service quality standards as WTA under COPUC's rules.² The stipulation outlines certain service requirements for NECC including: complaint and appeal policies, standards for availability of service, standards for adequacy of facilities, record keeping policies for customer complaints, requirements for retention of records, standards for provision of services during maintenance or emergencies, standards for adequacy of service, network call completion requirements, standards relating to trouble report response, customer deposit requirements, standards relating to denial or discontinuance of service, customer billing requirements, directory listing requirements, maintenance of plant practices, and

² NECC is a wireless provider, and, therefore, COPUC's regulatory jurisdiction over NECC is not the same as its jurisdiction over an incumbent local exchange carrier such as WTA.

requirements for changing provider/carrier presubscription.³ In addition, NECC stipulated that COPUC will be able to conduct the same type of audits as the Commission may conduct of WTA. With such requirements imposed on NECC, NECC is operating under substantially similar requirements as WTA.

In the designation proceedings for NECC, COPUC carefully examined public interest issues. Throughout the proceedings, many different aspects of public interest were reviewed including service quality, financial ability of rural providers to withstand competition, benefits of choice to rural customers, and promotion of universal service. COPUC, in these cases,⁴ determined that designation of a second ETC in certain rural areas was in the public interest. COPUC determined that increased customer choice was one of the most significant public interest benefits. Increased choices entailed the likelihood of different local calling areas, the availability of different products, increased service products and innovation, and potentially beneficial rates for end-users. In addition, COPUC found that some customers could avoid significant construction charges from the incumbent rural providers by taking service from NECC, a result promoting affordable universal service to these customers. COPUC notes that while the incumbent rural providers, which included WTA, suggested that competition would harm

³ The stipulation in NECC's case for designation as a competitive ETC, COPUC Docket Nos. 00A-315T and 00A-491T, has been filed with the Commission in COPUC's pending Petition to redefine the service area of CenturyTel of Eagle, Inc., CC Docket No. 96-45. See attachments to May 14, 2003 letter to Secretary Dortch by David LaFuria. Upon request, COPUC will submit a hard copy of that stipulation in the instant proceeding concerning WTA.

⁴ The decision designating NECC as an ETC was made by an Administrative Law Judge and became COPUC's decision by operation of law when no interested party appealed that decision. Notably, CTA was a party to that docket, and did not appeal the ALJ's decision. See COPUC Decision No. R01-1298 available on COPUC's website, www.dora.state.co.us/puc.

them financially, those providers failed to present persuasive evidence as to how they would be adversely impacted.

Conclusion

For the foregoing reasons and for the reasons discussed in COPUC's Petition, COPUC requests that the Commission concur with its request to redefine WTA's service area.

Dated, this ____ day of July, 2003.

KEN SALAZAR
Attorney General

ANTHONY MARQUEZ, 8389*
First Assistant Attorney General
State Services Section
Attorneys for
The Colorado Public Utilities Commission
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5380

*Counsel of Record

CERTIFICATE OF SERVICE

I, Diane Carpenter, certify that a copy of the foregoing **REPLY COMMENTS BY THE COLORADO PUBLIC UTILITIES COMMISSION** in CC Docket No. 96-45, DA 03-1957 was served on this 14th day of July, 2003, by first-class U.S. Mail, postage prepaid, at Denver, Colorado, addressed as follows:

Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B540
Washington, D.C. 20554

Qualex International Portals II
445 12th Street, SW
Room CY-B402
Washington, D.C. 20554

L. Marie Guillory, Esq.
Jill Canfield, Esq.
For National Telecommunications Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
